



## State of Vermont

# LAND USE PERMIT

**CASE NO: 7R0841-13**

New England Waste  
Services of Vermont, Inc.  
220 Avenue B  
Williston, VT 05495

**LAWS/REGULATIONS INVOLVED**

10 V.S.A. §§ 6001 - 6093 (Act 250)

District Environmental Commission #7 hereby issues Land Use Permit #7R0841-13, pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit applies to the ± 1043 acres of land identified in Book 32 Pages 341-348, Book 62 Pages 545-548, Book 35 Pages 475-477, Book 38 Pages 363-366, Book 41 Pages 114-116, and Book 58 Pages 386-388 of the land records of the Town of Coventry, Vermont, as the subject of a deed to New England Waste Services of Vermont, Inc.

**This permit specifically authorizes the Permittee to construct and operate Phase VI, to allow expansion and continued operation of the existing double-lined Landfill Facility, including phased development of an additional ± 51.2 acres of lined landfill capacity, expanded leachate management and gas control infrastructure, stormwater treatment ponds, greenhouses, and three contiguous soil stockpiles located south of Phase VI. This permit authorizes continued operation of the Facility, including Phase VI, for a period of time ending on June 30, 2028. The project is located on Airport Road in the Town of Coventry, Vermont.**

Jurisdiction attaches because the Project constitutes a material change to a permitted development, and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittee, and its assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District Commission in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with: (a) the conditions of this permit, (b) Findings of Fact and Conclusions of Law #7R0841-12-A and #7R0841-13, and (c) the permit application, plans, and exhibits on file with the District Commission and other material representations.
3. All conditions of Land Use Permit #7R0841 and amendments are in full force and effect except as further amended herein.
4. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
5. The Permittee shall comply with all of the conditions of the following Agency of Natural Resources Permits:

- a. Wastewater System and Potable Water Supply Permit #WW-7-0240-4 issued on January 11, 2018 by the ANR Drinking Water and Groundwater Protection Division;
  - b. Title V Air Pollution Control Permit to Construct and Operate, AOP-17-018, issued by the Air Quality & Climate Division of ANR on August 1, 2018 (the "Air Permit");
  - c. Individual Stormwater Discharge Permit #4795-INDC.5 as amended, issued on November 28, 2017 by the ANR Watershed Management Division;
  - d. ANR Individual Construction Stormwater Discharge Permit # 4795-INDC.5A, issued on May 16, 2017 by the ANR Watershed Management Division;
  - e. Individual Wetland Permit #2016-067, issued on June 13, 2016 by the ANR Watershed Management Division;
  - f. Pretreatment Discharge Permit No. 3-1406, issued on November 4, 2011 by the ANR Wastewater Management Division;
  - g. Solid Waste Certification, issued on October 12, 2018 by the ANR-DEC Waste Management Division.
6. Any nonmaterial changes to the permits listed in the preceding condition shall be automatically incorporated herein upon issuance by the Agency of Natural Resources.
  7. A copy of this permit and plans shall be on the site at all times throughout the construction process.
  8. No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
  9. No further subdivision, alteration, and/or development on the tract of land approved herein shall be permitted without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
  10. Pursuant to 10 V.S.A. § 8005(c), the District Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
  11. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittee and its successors and assigns.
  12. Permittee shall not erect additional exterior project signage without first obtaining approval from the District Commission. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marking signs.
  13. The Permittee and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibits #19 and #40 by replacing any dead or diseased plantings within the season or as soon as possible after the ground thaws, whichever is sooner.

14. Pursuant to the Commission's Findings of Fact and Conclusions of Law under Criterion 9(B), Exhibit 22, the Permittee shall, prior to commencement of construction of the Project, submit the calculated mitigation fee payment (\$182,442.60) to the Vermont Housing and Conservation Board (VHCB), in order to compensate for the 142.2 acres of primary agricultural soils whose agricultural potential will be reduced or eliminated as a result of the Project. In the event that the Permittee does not submit the \$182,442.60 mitigation fee corresponding to the 142.2 acres impacted by the Project within three (3) years of the August 18, 2017 date of issuance of the Criterion 9(B) Findings, then the Permittee shall instead submit the re-calculated mitigation fee corresponding to the acreage impacted, prior to commencement of construction of the Project; the required re-calculated mitigation fee shall be determined in the future based on the acreage impacted by the Project (142.2 acres) and based on the future per-acre cost to acquire conservation easements for primary agricultural soils in the geographic region of the Project, as determined in the future by the Secretary of the Vermont Agency of Agriculture, Food, and Markets (AAFM), and which will likely differ from and thus may exceed the current rate of \$1,283 per acre cost to acquire conservation easements, thus may result in a higher fee to mitigate the 9(B) soils impacted by the Project.
15. For the duration of this permit, Permittee shall contract with an independent third party to monitor, investigate, and document landfill odor occurrences, respond quickly to off-site odor complaints, and inspect solid waste loads being delivered to the facility for nonconforming waste. The independent third party shall provide these services on a on a full-time basis.

This independent third party may not be a current or former owner, officer, employee, or other such affiliate of Permittee or any subsidiary or parent company of Permittee. Nor shall such independent third party have worked on the project authorized by this permit either on behalf of Permittee or any other party to this permit proceeding. The third party shall be trained in odor detection and/or landfill construction, operation, and inspection and shall have the ability to respond via a site visit to investigate off-site odor complaints within 30 minutes of being notified of the complaint regardless of the time of day the complaint is received. Permittee shall grant access to the independent third party for the purposes of conducting such inspections.

Prior to contracting with such independent third party, Permittee shall submit to the District Commission for its review and approval the identity of the proposed independent third party together with the proposed contract with such party. The Natural Resources Board, with the advice of the District Commission and the Agency of Natural Resources shall have the authority to terminate the contract with the third party. Any contract between Permittee and the third party shall account for this authority. In the event the Natural Resources board terminates the contract, Permittee shall enter into a contract with a replacement independent third party per the requirements of this condition.

The independent third party shall report directly to the District Commission, Natural Resources Board, and the Agency of Natural Resources rather than Permittee. The third party may share information with the Permittee only after sharing it with the District Commission, Natural Resources Board, and the Agency of Natural Resources, and the Permittee shall not preview, prescreen, or filter any information flowing from the third party to these entities.

Permittee may apply to modify this requirement, (e.g. to reduce it to a part-time position, with use of odor monitoring technology), but the presence of a local third party inspector shall not be fully eliminated unless ANR positions a full time ANR staff person, trained in odors and dedicated full time to landfill inspections and oversight, who can be present on site within 30 minutes of a need.

16. Construction having potential to generate off-site noise will be limited to 6 AM to 6 PM weekdays and 7 AM to 6 PM on weekends, and no such construction shall occur on National Holidays
17. Facility hours of operation will remain unchanged (7:00 a.m. to 4:00 p.m., Monday through Friday and 7:00 a.m. to 11:30 a.m. on Saturday). These are the hours when trucks may dump waste at the active area(s) of the landfill. The landfill gate may open at 6:00 a.m. so that trucks may queue on landfill property. Arrivals and queuing before 6:00 a.m. is strictly prohibited, queuing along public roads is strictly prohibited, and Permittee shall so educate truck drivers. In addition, operations that generate off-site noise shall be limited to 6 a.m. to 5 p.m. weekdays and 7 a.m. to 12 p.m. noon on weekends, however the landfill operator may start equipment and move daily cover around, at the active landfill area, not earlier than 6:30 a.m.(in preparation for the arrival of the first trucks carrying waste, commencing not earlier than 7 a.m.)
18.
  - a. Disposal of landfill leachate from the Facility, including that generated from all Phases of the landfill (Phase I-IV) and from Phase VI, is not permitted at the Newport WWTF. Permittee may not dispose of leachate at the Newport WWTF, nor dispose of landfill leachate on-site or elsewhere within the watershed of Lake Memphremagog, without Act 250 permit amendment. This restriction shall take effect 90 days from the date of issuance of this permit.
  - b. Permittee may apply for Act 250 permit amendment, to modify this restriction, if such an amendment application is supported by new science, new technology and/or new data which demonstrates, or seeks to demonstrate, that the risk to the Lake Memphremagog water quality (drinking water supply) will not be unduly adverse.
  - c. Permittee shall apply for an Act 250 permit amendment for any change to its method of leachate management, pre-treatment, and disposal, including but not limited to construction of on-site treatment systems.
  - d. Permittee shall submit a copy of its study of treatment options for leachate management (two onsite and two offsite, with both studies to be completed by October 12, 2019) to the District Commission for its file.
19. The Permittee shall submit an annual evaluation of impacts to ground and surface water quality, from the unlined landfill areas on the Property, to the Commission, and to all Parties admitted under Criterion 1(B). The evaluation shall include a recommendation concerning relocation of the waste from the unlined landfill areas, into lined Landfill areas, based on the current data and science.

20.
  - a. In addition to the ANR approved financial responsibility instrument in the Permit covering the post closure period, NEWSVT shall establish an additional environmental integrity trust fund ("Phase VI Trust Fund") for the benefit of the ANR. The trustee of the Phase VI Trust Fund shall be an institution acceptable to the Parties. Upon appointment of the trustee, NEWSVT shall report the identity of the trustee to the District #7 Commission.
  - b. NEWSVT shall annually deposit an amount equal to \$0.20 + per ton ("Phase VI Trust Fund Fee", to be adjusted annually for inflation based on a base rate of \$0.20 (2006), as identified in the Commission's Findings) of solid waste accepted for disposal at the Coventry Landfill into the Phase VI Trust Fund during the respective year of operation (accepting solid waste for disposal) of the Coventry Landfill. The Phase VI Trust Fund fees shall only be payable for solid waste disposed of in Phase VI of the Coventry Landfill. The first annual deposit of the Phase VI Trust Fund Fee to the Phase VI Trust Fund shall be made one year from the date that solid waste is first disposed of in Phase VI of the Coventry Landfill and subsequent deposits shall be made annually thereafter on the anniversary of such date. NEWSVT shall report to the District #7 Commission, ANR, and MRCM the date that waste is first disposed of in Phase VI.
  - c. The Phase VI Trust Fund shall be used only after the currently regulated thirty (30) year Phase VI post-closure period, and only for the following purposes: (1) maintenance of the Coventry Landfill required by the ANR; and (2) corrective measures required by the ANR and for mitigation of damages caused by the landfill.
  - d. The Phase VI Trust Fund may serve as evidence of compliance with any future financial responsibility required by the ANR or federal EPA regulations for the period of time beyond post-closure. If funds in the Phase VI Trust Fund are less than that required to comply with any such ANR or federal EPA requirements, NEWSVT shall supplement such Phase VI Trust Funds with additional financial responsibility instruments in a manner that satisfies such requirements. The ANR shall return to NEWSVT the difference between the funds in the Phase VI Trust Fund and the amount required to comply with any ANR or federal EPA requirements.
  - e. The Phase VI Trust Fund shall be terminated, and the remaining funds shall be returned to NEWSVT or its successor entity upon written confirmation from the ANR that the Phase VI Trust Fund is no longer required to maintain financial responsibility for the Coventry Landfill.
21. Installation of synthetic Closure Turf (as a component of final closure system) is not permitted. Prior to installation of Closure Turf (as a component of the final closure system) a permit amendment must be submitted to the District Commission for additional review and approval.
22. In addition to conformance with all erosion prevention and sediment control conditions, the Permittee shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the

Permittee from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.

23. The Permittee shall provide each prospective purchaser of any interest in this Project a copy of the approved plan and the Land Use Permit before any written contract of sale is entered into.
24. Permittee shall pay the remaining application fee due (\$24,750), pursuant to the fee waiver decision (MOD dated July 22, 2019), to the Natural Resources Board, within 30 days of issuance of this decision.
25. The Permittee shall reference the requirements and conditions imposed by Land Use Permit #7R0841-13 in all deeds of conveyance and leases.
26. This permit amendment shall expire on **June 30, 2028**, unless extended by the District Environmental Commission. If this permit is not renewed (extended), Permittee shall submit an updated closure plan for Commission review and approval, prior to installing the final closure system.
27. All site work and construction shall be completed in accordance with the approved plans by June 30, 2028, unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without public hearing.
28. The Permittee shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed or two years from the date of this permit, whichever shall occur first. Application for extension of time for good cause shown may be made to the District Commission. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittee shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
29. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at St. Johnsbury, Vermont, this 23<sup>rd</sup> day of July, 2019.

By /s/ Eugene Reid  
Eugene Reid, Chair  
District #7 Commission

Members participating in this decision:

Keith Johnson, Nicole Davignon

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2<sup>nd</sup> Floor, Suite 303, Burlington, VT 05401.

## CERTIFICATE OF SERVICE

I hereby certify that I, sent a copy of the foregoing documents Memorandum of Decision, Findings of Fact and Conclusions of Law and Order and Permit Amendment #7R0841-13 for New England Waste Services of Vermont, Inc., Williston VT by U.S. Mail, postage prepaid to the following individuals without e-mail addresses and by e-mail to the individuals with e-mail addresses listed, on this 23<sup>rd</sup> day of July, 2019.

**Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or e-mail below. If you have elected to receive notices and other documents by e-mail, it is your responsibility to notify the Act 250 office of any e-mail address changes.**

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